

1 [Counsel Information Listed On Signature Page]

2
3 UNITED STATES DISTRICT COURT
4 NORTHERN DISTRICT OF CALIFORNIA
5 SAN FRANCISCO DIVISION

6 CAPELLA PHOTONICS, INC.,
7 Plaintiff,
8 v.
9 CISCO SYSTEMS, INC.,
10 Defendant.

No. 3:14-CV-03348-EMC

**UPDATED JOINT STATUS REPORT,
STIPULATED REQUEST TO CONTINUE
CASE MANAGEMENT CONFERENCE,
AND [~~PROPOSED~~] ORDER**

11 CAPELLA PHOTONICS, INC.,
12 Plaintiff,
13 v.
14 FUJITSU NETWORK
15 COMMUNICATIONS, INC.,
16 Defendant.

No. 3:14-CV-03349-EMC
(related case)

17 CAPELLA PHOTONICS, INC.,
18 Plaintiff,
19 v.
20 TELLABS OPERATIONS, INC. AND
21 CORIANT (USA) INC.,
22 Defendant.

No. 3:14-CV-03350-EMC
(related case)

23 CAPELLA PHOTONICS, INC.,
24 Plaintiff,
25 v.
26 CIENA CORPORATION,
27 Defendant.

No. 3:14-CV-03351-EMC
(related case)

1 Lead counsel for Plaintiff Capella Photonics, Inc. (“Capella” or “Plaintiff”), and
2 Defendants Cisco Systems, Inc. (“Cisco”), Ciena Corporation (“Ciena”), Fujitsu Network
3 Communications, Inc. (“FNC”), Coriant Operations, Inc. (formerly Tellabs Operations, Inc.),
4 and Coriant (USA) Inc. (Coriant entities collectively “Coriant”) (collectively “Defendants”)
5 (together with Plaintiff, “the parties”) submit this Updated Joint Status Report for the above-
6 captioned cases (collectively, the “Related Actions”) pursuant to the Court’s March 20, 2017
7 Order (Dkt. No. 183).

8 Pursuant to the Court’s March 6, 2015 Order, the Related Actions are “stayed in their
9 entirety pending final exhaustion of the relevant review proceedings, including any appeals.”
10 (Dkt. No. 172 at 6). The parties hereby apprise the Court of the status of the inter partes
11 review (“IPR”) proceedings initiated by Cisco and additional inter partes review proceedings
12 concerning the Patents in Suit (U.S. Patent Nos. RE42,368 (“’368 Patent”) and RE42,678
13 (“’678 Patent”)).

14 **I. STATUS OF THE IPR PROCEEDINGS**

15 On July 15, 2014, Cisco filed a petition at the United States Patent & Trademark
16 Office (Patent Office) for inter partes review (IPR2014-01166) on the ’368 patent. Cisco filed
17 a petition (IPR2014-01276) on the ’678 patent less than a month later. The two IPR petitions
18 addressed every asserted claim against each of the Defendants. The Patent Office joined
19 Ciena, FNC, and Coriant in these two IPR proceedings. The Patent Office issued Final
20 Written Decisions on January 28, 2016 in IPR2014-01166 and on February 17, 2016 in
21 IPR2014-01276. The Patent Office found unpatentable every claim asserted in this litigation.
22 Capella filed requests for rehearing in both IPRs. The Patent Office denied the requests for
23 rehearing. Capella filed a notice of appeal to the Court of Appeals for the Federal Circuit.

24 On August 24, 2015, the Patent Office instituted FNC’s inter partes review (IPR2015-
25 00726) involving the ’368 patent and FNC’s inter partes review (IPR2015-00727) involving
26 the ’678 patent. The Patent Office joined Ciena and Coriant in these two IPR proceedings.
27 The Patent Office issued Final Written Decisions on September 28, 2016 in IPR2015-00726
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1 and IPR2015-00727. The Patent Office found unpatentable every claim asserted in this
2 litigation. Capella filed notices of appeal to the Court of Appeals for the Federal Circuit.

3 On August 25, 2015, the Patent Office instituted inter partes review (IPR2015-00731)
4 for the '368 patent and inter partes review (IPR2015-00739) for the '678 patent based on
5 petitions filed by non-party JDS Uniphase Corporation (JDSU) (now called "Lumentum").
6 The Patent Office joined Cisco, Ciena, FNC, and Coriant in these two IPR proceedings. The
7 Patent Office issued Final Written Decisions on September 29, 2016 in IPR2015-00731 and
8 on October 14, 2016 in IPR2015-00739. The Patent Office found unpatentable every claim
9 asserted in this litigation. Capella filed notices of appeal to the Court of Appeals for the
10 Federal Circuit.

11 On December 15, 2016, the Federal Circuit consolidated the appeals of the above-
12 identified IPR proceedings. On February 13, 2017, Capella submitted its opening brief. On
13 May 26, 2017, Appellees submitted their responsive briefing. On June 23, 2017, Capella
14 submitted its reply brief. The Federal Circuit has not yet scheduled oral argument.

15 **II. STIPULATED REQUEST TO CONTINUE CASE MANAGEMENT**
16 **CONFERENCE**

17 Given the status of the pending appeals, the Parties propose and stipulate to continuing
18 the Case Management Conference, currently scheduled for September 28, 2017 (Dkt. No.
19 183), until March 22, 2018, or such other date as the Court may wish. The Parties further
20 propose and stipulate to filing an updated joint status report on March 15, 2018. A [Proposed]
21 Order continuing the Case Management Conference in light of the foregoing stipulation is
22 attached hereto.

1
2 Dated: September 21, 2017

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3 By: /s/ Robert D. Becker w/ permission
4 Robert D. Becker
5 Attorneys for Plaintiff
6 *Capella Photonics, Inc.*

7
8 Dated: September 21, 2017

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27 *(USA) Inc.*

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1 Pursuant to Local Rule 5-1(i)(3) regarding signatures, I, Nathaniel T. Browand, attest
2 that concurrence in the filing of this document has been obtained from each of the other
3 signatories. I declare under penalty of perjury under the laws of the United States of America
4 that the foregoing is true and correct.

5 Executed on September 21, 2017.

6 /s/ Nathaniel T. Browand
7 Nathaniel T. Browand
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1 Pursuant to the Parties' stipulated request to continue the September 28, 2017 Case
2 Management Conference, and for good cause, it is so Ordered.

- 3 1. The Case Management Conference is continued until March 22, 2018.
4 2. The parties shall submit an updated joint status report on March 15, 2018.

5 Dated: 9/22/17
6 _____

